

STATE OF MICHIGAN  
COURT OF APPEALS

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KIRK HANNING,

Plaintiff-Appellant,

v

MARTY MILES COLLEY and DUMITRU  
JITIANU,

Defendants-Appellees.

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UNPUBLISHED

May 20, 2008

No. 278402

Oakland Circuit Court

LC No. 2006-076903-NF

Before: White, P.J., and Hoekstra and Smolenski, JJ.

HOEKSTRA, J., (*dissenting*).

After being injured in an automobile accident, plaintiff filed a complaint against defendants, alleging negligence and claiming that his injuries constituted a serious impairment of body function. The trial court granted summary disposition to defendants on the basis that plaintiff's injuries did not meet the serious impairment threshold. Thereafter, plaintiff indicated that he wished to pursue an excess economic damages claim. Because the trial court found that the claim was not pleaded and that plaintiff's failure to plead the claim earlier constituted inexcusable delay pursuant to MCR 2.118(A)(3), it ordered plaintiff to file an amended complaint and awarded reasonable attorney fees to defendants from that point forward. When plaintiff failed to timely file the amended complaint, the case was dismissed. This appeal ensued.

Plaintiff's sole claim on appeal is that he should not have been required to amend his complaint and face the sanction of MCR 2.118(A)(3) because he "was laboring under the belief that his original complaint adequately stated a claim for excess economic damages, and [he] forwarded the claim on multiple occasions."

On appeal, decisions concerning the meaning and scope of pleadings are reviewed for an abuse of discretion. *Dacon v Transue*, 441 Mich 315, 328; 490 NW2d 369 (1992).

Initially, I reject plaintiff's assertion that his subjective "belief" is relevant to the issue on appeal. On its face, plaintiff's complaint is one for negligence. Consequently, I am not persuaded that the trial court abused its discretion in concluding that plaintiff failed to plead a claim for excess economic damages by requesting "other damages" in the damages paragraph of the negligence count of his complaint. Further, I find plaintiff's reliance on his answers to interrogatories, deposition testimony, and case evaluation summary to be misplaced. None of

these necessarily converts what is, on its face, a negligence case into one for excess economic loss.

I would affirm.

/s/ Joel P. Hoekstra